

**STATE BOARD OF WORKER'S COMPENSATION  
STATE OF GEORGIA**

DEMETRIUS PHILLIPS,	)	
	)	
Plaintiff/Claimant,	)	
v.	)	CIVIL ACTION FILE
	)	NO. 2019-127648
TRIMAC TRANSPORTATION, INC.,	)	
and TRIMAC EQUIPMENT LEASING,	)	
INC.,	)	
	)	
Employers/Defendants.	)	

**PLAINTIFF/CLAIMANT'S SUPPLEMENT TO  
MOTION FOR CONTEMPT SANCTIONS FOR  
FAILURE TO COMPLY WITH THIS COURT'S ORDER**

NOW COMES Claimant Demetrius **PHILLIPS** ("**PHILLIPS**") and moves pursuant to O.C.G.A. § 9-11-37(b) for sanctions against Employers TRIMAC Transportation, Inc. ("**TRIMAC**") and TRIMAC Equipment Leasing, Inc. ("**TRIMAC LEASING**") ("**Employers/Defendants**") on the grounds that Employers have intentionally and steadfastly refused to produce documents in their possession, custody and control in violation of this Court's Order.

**FACTS**

**1. Background**

**TRIMAC** is an international trucking company that is publicly traded with revenues exceeding \$400 million in 2019. **TRIMAC** employs over 1,800 people. **TRIMAC** owns or leases at least 100 tank truck cleaning facilities in the United States. **TRIMAC** operates 2 of its tank truck cleaning facilities in Atlanta in Fulton County at 605 Selig Drive SW, Atlanta, Fulton County, Georgia 30336, and 6800 McLarin Road,

Fairburn, Fulton County, Georgia,<sup>4</sup> where **TRIMAC** provides transfer and storage of **CHEMICALS**, interior tank cleaning, limited interior railcar cleaning and exterior cleaning of tank trailers and trucks.<sup>5</sup> **TRIMAC** also transports poisonous, lethal, carcinogenic **CHEMICALS** for 4 of the largest chemical producers in the world.

**PHILLIPS** was employed by **TRIMAC** as a Wash Rack Technician in Atlanta and Fairburn, Georgia for 13 years from on or about 2006 until August 2019. **PHILLIPS** cleaned tank trucks, railcars and other containers (“Confined Spaces”) that last contained poisonous, lethal, carcinogenic chemicals.

**TRIMAC’S** poisonous, lethal, carcinogenic chemicals last contained in tank trucks, railcars and other containers cleaned by **PHILLIPS** included, among others, **ACRYLATE, ALUMINUM SULFATE, AMMONIA, BENZENE, CAUSTIC, FORMALDEHYDE, METHYLENE, METHYLENE DIPHENYL DIISOCYANATE (MDI), NAPHTHA, HYDROCHLORIC ACID, 85% HYDROGEN PEROXIDE, NITRIC ACID, ROUNDUP® (Glyphosate), STYRENE, SULFURIC ACID, TOLUENE, TOLUENE DIISOCYANATE (TDI) and XYLENE (“CHEMICALS”).**

While employed by **TRIMAC**, **PHILLIPS** worked in Confined Spaces with, handled, removed, and disposed of the **CHEMICALS**.

In August 2019, **PHILLIPS** was diagnosed with Blastoid Mantle Cell Lymphoma as a direct and proximate result of his repeated exposure to the **CHEMICALS**.

**PHILLIPS** has no family history of Blastoid Mantle Cell Lymphoma. Lymphoma of this type is well-known to be caused by exposure to lethal, poisonous and carcinogenic

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<sup>4</sup> TRIMAC Pollutant Management Plan (PMP) p 5 of 16, 2.1 Facility Location [Exhibit 1]

<sup>5</sup> TRIMAC Pollutant Management Plan (PMP) p 5 of 16, 2.2 Facility Operation

**CHEMICALS** to which **PHILLIPS** was exposed on a daily basis for over a decade while employed by **TRIMAC**.

**PHILLIPS** filed this claim November 2019.

## **2. TRIMAC Withholds Documents Critical to PHILLIPS Case**

**PHILLIPS** served Document Requests on **TRIMAC** over a year ago on December 10, 2019. The requested documents are required for **PHILLIPS** to prove the causal link between **PHILLIPS'** 13 years of daily exposure to the hazardous **CHEMICALS** at **TRIMAC** and **PHILLIPS'** Blastoid Mantle Cell Lymphoma. The requested documents are required to prove, *inter alia*, the following.

- 1.1. The precise chemicals and chemical compounds **PHILLIPS** handled, removed from and cleaned from the interiors of truck tanks, railcars and totes at both **TRIMAC** facilities from 2006 to August 2019.
- 1.2. The amount and frequency of the chemical exposure suffered by **PHILLIPS** at both **TRIMAC** facilities from 2006 to August 2019.
- 1.3. The Personal Protective Equipment ("PPE") available to and used by **PHILLIPS** at the time of **PHILLIPS** employment at both **TRIMAC** facilities from 2006 to August 2019.
- 1.4. **PHILLIPS** participation in hazardous **CHEMICAL** waste disposal employed at both **TRIMAC** facilities from 2006 to August 2019.

## **3. TRIMAC Withholds 208,000<sup>6</sup> Documents from August 17, 2020 Production, Court Orders Production**

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<sup>6</sup> 16-25 tank trucks were cleaned each day at each Atlanta TRIMAC facility for each of the 13 years Phillips cleaned Truck Tanks at the TRIMAC Wash Rack (See Johnny Rogers deposition p 175, 6-12; Chris French Deposition p 37, 12-14; Zarrius Dupree Deposition p 19, 3-9) **Wash Rack Documents** generated with each cleaning include, *inter alia*, Shipping Manifests, Bills of Lading, Safety Data Sheets ("SDS"), Material Safety Data Sheets ("MSDS"), Wash Tickets, Wash Requests, Wash Rack Work Orders, Tank Entry Permits, Invoices and all other documents ("**Wash Rack Documents**") regarding any

After **PHILLIPS** consented to **TRIMAC'S** repeated requests for additional time to respond, and after **PHILLIPS** had a hearing before the Court regarding **TRIMAC'S** steadfast refusal to produce even a single document, on or about August 17, 2020 (8 months later), **TRIMAC** produces 7,219 Wash Rack documents, withholding over 208,000<sup>7</sup> documents.

Of the 7,219 Wash Rack documents **TRIMAC** produced, almost none were produced for years prior to 2015, and only 1 or 2 of the 5+ Wash Rack Documents<sup>8</sup> ordered to be produced were produced. **TRIMAC** withheld over 208,000<sup>9</sup> documents.

#### **4. Court's Order Requires TRIMAC Produce Full and Complete Responses**

On September 11, 2020, after the second hearing before this Court, this Court ordered **TRIMAC** to produce "full and complete discovery producing all documents responsive to each request."<sup>10</sup> **TRIMAC** refused to produce documents in **TRIMAC'S** possession, custody and control that this Court ordered produced.

This Court's September 11, 2020, Order requires **TRIMAC** to produce the following: (1) Shipping Manifests, (2) Bill of Ladings, (3) Safety Data Sheets (SDS), (4) Wash Requests, (5) Wash Rack Orders as these are required to complete the process for each tank truck and railcar before removing chemicals remaining in the tank truck,

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and all tank truck cleaning, tank cleaning, railcar cleaning and tank trailers and trucks. The total number of documents subject to those Court's Sept 2020 Order exceeds 208,000.

<sup>7</sup> *Id.*

<sup>8</sup> **Wash Rack Documents** generated with each cleaning include, *inter alia*, Shipping Manifests, Bills of Lading, Safety Data Sheets ("SDS"), Material Safety Data Sheets ("MSDS"), Wash Tickets, Wash Requests, Wash Rack Work Orders, Tank Entry Permits, Invoices and all other documents ("**Wash Rack Documents**") regarding any and all tank truck cleaning, tank cleaning, railcar cleaning and tank trailers and trucks.

<sup>9</sup> *Supra.*

<sup>10</sup> Court Order Phillips Order for Claim No 2019127648 September 11, 2020

cleaning the interior with the last contained chemical, and disposing of the remaining chemical. Additional documents include (6) Invoices and (7) Payment Records.

This Court's September 11, 2020, Order, reads in pertinent part as follows:

"More generally, the Employer/Insurer are directed to provide a **full and complete response**, producing **all documents** responsive to each request not protected from discovery by a properly raised objection. Specifically, Employee's counsel referenced in our call that of the 5 documents generated for each tanker truck cleaned, only 2 of the documents were produced. **The Employer/Insurer are directed to provide all documentation generated each time a tanker truck was cleaned by the Employee.**" <sup>11</sup>

**5. In Response to Court Order, TRIMAC Again Produces Same 7,219 Wash Rack Documents TRIMAC Produced Prior to Court Order with Different File Names**

Defying this Court's Order, 2 weeks after the Court ordered documents produced by the close of business on September 25, 2020, **TRIMAC** again produced the same 7,219 Wash Rack Documents **TRIMAC** previously produced prior to this Court's Order on August 17, 2020, using different file names for the same 7,219 documents.

**TRIMAC** again intentionally withholds 208,000<sup>12</sup> Wash Rack Documents (67,600 Tank Entry Permits) in violation of this Court's September 11, 2020 Order.

**6. TRIMAC Required to Produce Court Ordered Documents Instantly Whether Documents Include PHILLIPS by Name**

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<sup>11</sup> **Wash Rack Documents** generated with each cleaning include, *inter alia*, Shipping Manifests, Bills of Lading, Safety Data Sheets ("SDS"), Material Safety Data Sheets ("MSDS"), Wash Tickets, Wash Requests, Wash Rack Work Orders, Tank Entry Permits, Invoices and all other documents ("**Wash Rack Documents**") regarding any and all tank truck cleaning, tank cleaning, railcar cleaning and tank trailers and trucks.

<sup>12</sup> *Supra*.

**TRIMAC'S** Joint Response and Objection to **PHILLIPS'** Motion for Contempt Sanctions claims, without seeking clarification from the Court, that **TRIMAC** is not obligated to provide documents that don't explicitly name "**PHILLIPS**." Not only contrary to the GA Civil Practice Act which requires the production of any document "reasonably calculated to lead to discovery admissible evidence," it violates this Court's Order. **TRIMAC'S** basis for withholding documents without **PHILLIPS'** name also warrants sanctions, especially when considering that of the documents that **TRIMAC** has produced, less than 1 in 10 contains the name **PHILLIPS**. Considering **PHILLIPS** worked at **TRIMAC'S** Wash Racks, both the Atlanta and Fairburn facilities for 13 years, **TRIMAC** withholds a substantial number of documents.

Whether **PHILLIPS'** name is listed on the cleaning document does not indicate the level of **PHILLIPS'** exposure to the **CHEMICALS** while working in **TRIMAC'S** Wash Racks. **PHILLIPS** did not avoid exposure to the **CHEMICALS** merely because he was not the one to sign the document. At least 3 **TRIMAC** employees<sup>13</sup> work together to clean truck tanks while only 1 of the 3 may appear on a cleaning document. Whether an employee signs the document does not indicate his level of exposure to **TRIMAC'S** hazardous **CHEMICALS** that **PHILLIPS** fully participated in cleaning.

Tank Entry Permits, for instance, typically contain the name of only 1 of at least 3 **TRIMAC** employees who clean the truck tank. **TRIMAC'S** policy requires at least 3 people participate in every tank entry.<sup>14</sup> Whether **PHILLIPS'** name is on **TRIMAC'S** Tank Entry Permit, **PHILLIPS** was admittedly in the Wash Rack, and exposed to

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<sup>13</sup> Deposition of Johnny Rogers p 68, 10-20

<sup>14</sup> *Id.*

**TRIMAC'S** lethal, carcinogenic **CHEMICALS** whether **PHILLIPS** signed the cleaning document.<sup>15</sup>

Then, too, the Civil Practice Act requires only that the discovery (Tank Entry Permits) be “reasonably calculated to lead to the discovery of admissible evidence.”<sup>16</sup> That they are not can hardly be argued here. Bottom line. In order to comply with the Court’s September 11, Order, **TRIMAC** shall, as the Court required, provide “**all documentation generated each time a tanker truck was cleaned by the Employee.**”<sup>17</sup>

Whether signed by **PHILLIPS** these documents are also admissible as similar transaction evidence. **TRIMAC'S** Tank Entry Permits indicate 1) what chemicals were cleaned, 2) whether they were claimed to be non-hazardous, and 3) what if any PPE was used. These documents are thus illustrative and admissible as evidence.

**7. Deponents Confirm Documents Withheld Even from TRIMAC'S Counsel After Being Confronted with Confined Entry Space Document Section 3.2.1 (e) 10-Year Record Keeping Requirement on October 22, 2020 (a full month after this Court's Order).**

**TRIMAC'S** “Confined Space Entry Document” contains the requirements for Confined Space Entry Permits and was produced by **TRIMAC**. At page 14, Section

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<sup>15</sup> Chris French Deposition p 14, 2-25

<sup>16</sup> OCGA 9-11-30 *et seq.*

<sup>17</sup> **Wash Rack Documents** generated with each cleaning include, *inter alia*, Shipping Manifests, Bills of Lading, Safety Data Sheets (“SDS”), Material Safety Data Sheets (“MSDS”), Wash Tickets, Wash Requests, Wash Rack Work Orders, Tank Entry Permits, Invoices and all other documents (“**Wash Rack Documents**”) regarding any and all tank truck cleaning, tank cleaning, railcar cleaning and tank trailers and trucks.

3.2.1 Documentation, 3.2.1 (e) provides that Tank Entry permits are “**required to be kept for 10 years.**”<sup>18</sup>

After initially claiming the requested documents do not exist, **TRIMAC** is confronted with the 10-year requirement in **TRIMAC’S** Confined Entry Space Document<sup>19</sup> at Brian Carter’s Deposition. Counsel for **TRIMAC** confirms that **TRIMAC** withheld these documents even from them.<sup>20</sup>

MR. POTTS: And why weren't we provided with the  
22 tank entry forms, Mr. Rosetti?

23 MR. ROSETTI: This is the first time I'm learning  
24 that they actually exist, so I will -- I will ask.

25 MR. POTTS: Mr. Gettinger, do you have an answer

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1 for that?

2 MR. GETTINGER: Same answer as Mr. Rosetti.

3 BY MR. POTTS:

4 Q. All right. There is also confined space entry log,

5 is that right Mr. Carter?<sup>21</sup>

## **8. TRIMAC Falsely Claims Court Ordered Documents Do Not Exist**

Notwithstanding this Court’s Order, **TRIMAC** refuses to provide **Wash Rack Documents** generated with each cleaning including, *inter alia*, Shipping Manifests, Bills of Lading, Safety Data Sheets (“SDS”), Material Safety Data Sheets (“MSDS”), Wash Tickets, Wash Requests, Wash Rack Work Orders, Tank Entry Permits, Invoices,

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<sup>18</sup> See Chris French Deposition, EX 13, TRIMAC Confined Space Entry Document SP-PRAC-P0001 as revised 02-15 -2020 p 14, section 3.2.1 (e)

<sup>19</sup> *Id.*

<sup>20</sup> Brian Carter Deposition p 94, 21-25; p 95, 1-3

<sup>21</sup> *Id.*



payment records and all other documents (“**Wash Rack Documents**”) regarding any and all tank truck cleaning, tank cleaning, railcar cleaning and tank trailers and trucks.

**TRIMAC** falsely claimed that any Wash Rack Documents **TRIMAC** had, if at all, would only be available for last 3 years.<sup>22</sup>

"[W]ash rack records are kept for three years. [...] There are some records going back to 10 years, but as the document relied on in the claimant's Motion (Pollutant Management Plan) specifies, the policy is to keep records for three years."<sup>23</sup>

**TRIMAC'S** Pollutant Management Plan (“PMP”) 3-year “minimum” document retention requirement merely overlaps **TRIMAC'S** 10-year document retention requirements. **TRIMAC'S** PMP reads in pertinent part as follows:

“Any **manifest** utilized to dispose of any waste off-site will be maintained at the facility for a period of at least three years in accordance with 40 CFR Part 442. [...] **Copies of customer supplied 1) shipping manifests, 2) BOLs and 3) SDS information** is maintained in an electronic data base by **TRIMAC** for a minimum of three years.”<sup>24</sup>

As stated in **TRIMAC'S** PMP, this overlapping<sup>25</sup> 3-year requirement is a “**minimum**” requirement and **refers only to** 1) manifests from waste disposals, customer supplied shipping manifests, 2) BOLs and 3) SDS. This overlapping requirement does not include all Wash Rack Documents as **TRIMAC** falsely claimed.

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<sup>22</sup> Ken Cooper's Affidavit is false. **TRIMAC'S** August 31, 2019, Response to Claimant's Motion for Contempt Sanctions is also false.

<sup>23</sup> Employer and Insurer's Joint Response and Objection to Claimant's Motion for Contempt Sanctions

<sup>24</sup> Trimac Pollutant Management Plan 2019, p 12, section 6.3

<sup>25</sup> *Id.*

**TRIMAC** refused to provide these documents even after this Court ordered them produced. **TRIMAC** cleaned 16-25 tank trucks per day,<sup>26</sup> 5 days per week, 52 weeks per year, 5-7 documents per cleaning, at each Atlanta location. As a result, **TRIMAC** was ordered to produce 208,000 documents for each of the 13 years **PHILLIPS** was employed at **TRIMAC**. Notwithstanding this Court's order, **TRIMAC** produced only 615 wash certificate documents for 2019 – withholding 20,185 documents; only 270 documents for 2018 – withholding 20,530 documents; only 245 documents for 2017 – withholding 20,555 documents, etc.

**9. PHILLIPS Proves at Great Expense Court Ordered Documents Exist and TRIMAC'S Claims to the Contrary are False**

Since September 25, 2020, a number of documents **TRIMAC** claimed did not exist have since been proved by **PHILLIPS** to exist, at great expense to **PHILLIPS**. The existence of documents this court ordered produced was confirmed by, *inter alia*, the following record evidence.

**PHILLIPS** has since confirmed that **TRIMAC** is required to keep 1) Tank Entry Permits for 10 years, 2) all Wash Rack Documents for DOW per their contract from 2009 (contract inception date) to present (11 years and counting), 3) Other carrier contracts also not produced by **TRIMAC** likely require the same.

First, **TRIMAC'S** Confined Space Entry Document (produced by **TRIMAC**)<sup>27</sup> confirms that the Tank Entry Permits are required “to be kept on file for 10 years.”<sup>28 29</sup>

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<sup>26</sup> Johnny Rogers Deposition p 175, 6-12; Chris French deposition p 37, 12-14

<sup>27</sup> See Chris French Deposition, EX 13, TRIMAC Confined Space Entry Document SP-PRAC-P0001 as revised 02-15 -2020 p 14, section 3.2.1 (e)

<sup>28</sup> *Id.* Below TRIMAC'S claim that they did not exist at all and alternatively that they would go back only 3 years are both false.

<sup>29</sup> Chris French Deposition, EX 13, TRIMAC Confined Space Entry SP-PRAC-P0001 as revised 02-15 - 2020 p 4 of 32, Purpose and Scope

**TRIMAC** initially refused to produce a single Tank Entry Permit, denying any Tank Entry Permits existed. They were produced only after confronting **TRIMAC'S** counsel at the depositions of Brian Carter and Johnny Rogers, *supra*.<sup>30</sup> **TRIMAC'S** Confined Space Entry reads in pertinent part at page 14 as follows: “**3.2.1 e) Confined space permits are to be kept on file for 10 years.**”<sup>31</sup> Contrary to **TRIMAC'S** claim that Wash Rack Documents go back “only 3-years,” **TRIMAC'S** Wash Rack Documents go back over 10-years, to at least 2009.<sup>32</sup>

Importantly, **TRIMAC'S** completed Confined Space Entry Permits record 3 important pieces of information necessary to proving **PHILLIPS'** case. Each Confined Space Entry Permit lists 1) the chemicals and compounds last contained in the tank trucks to which **PHILLIPS** was exposed, 2) whether according to **TRIMAC** the chemicals last contained in the tanks **PHILLIPS** was to clean were “hazardous” or “nonhazardous,” and 3) the Personal Protective Equipment (“PPE”) used, if any, when cleaning the tank trucks. **TRIMAC** not only has these documents, by withholding these documents **TRIMAC** violated this Court's Order of September 11, 2020.

Second, **TRIMAC'S** 2009 Uniform Bulk Motor Carrier Contract with the Dow Chemical Company (DOW) proves that Defendant has in its possession, custody and control the records ordered produced by this Court that **TRIMAC** falsely claimed did not exist.<sup>33</sup> Although **TRIMAC** refused to produce their common carrier contract with DOW,

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<sup>30</sup> Brian Carter Deposition p 94, 21-25; p 95, 1-3

<sup>31</sup> **TRIMAC** Confined Space Entry SP-PRAC-P0001 as revised 02-15 -2020 p 14 of 32, 3.2.1 (e) Documentation

<sup>32</sup> **TRIMAC** Confined Space Entry SP-PRAC-P0001 as revised 02-15 -2020 p 14 of 32, 3.2.1 (e) Documentation; **TRIMAC'S** 2009 Uniform Bulk Motor Carrier Contract with the Dow Chemical Company, sworn testimony of Trimac employees.

<sup>33</sup> Although not produced by **TRIMAC**, **TRIMAC** likely has a similar agreement with all Chemical and trucking companies it conducts business with.

**PHILLIPS** was, at his expense, able to obtain the document directly from DOW.

**TRIMAC'S** DOW contract requires that **TRIMAC** maintain all of these documents for the last 11 years, from 2009 (Contract Date) to present.

“Carrier will maintain for the life of this Agreement [from 2009] and for one (1) year after termination thereof [the following] (2) accounting of each trailer cleaned after transporting Dow produced and purchased Commodities pursuant to the terms of this agreement that provides; (i) the **DATES** on which such cleanings took place, (ii) the **IDENTITY** of the Residuals cleaned from trailers, (iii) the **QUANTITIES** of such Residuals removed from trailers, (iv) the **ULTIMATE DISPOSITION** of such Residuals, and (v) **RECEIPTS** for the washing [...] **WASH CERTIFICATES** [...]”<sup>34</sup>

What **TRIMAC** falsely claimed to this Court would be an admitted violation of both their Confined Space Entry Permit Requirements (required by federal and state agencies, OSHA, EPA, etc. as well as **TRIMAC'S** internal documents) and also breach **TRIMAC'S** contract with DOW.<sup>35</sup> DOW is **TRIMAC'S** largest client. While **TRIMAC** has to date refused to produce other Common Carrier Contracts with other chemical companies, many large chemical producers likely have the same requirements as **TRIMAC'S** contract with DOW, *i.e.*, contract inception.

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<sup>34</sup> Uniform Bulk Motor Contract p 10 of 19, 14(a)

<sup>35</sup> *Id.*

Moreover, of the sequentially numbered Tank Entry Permits produced by TRIMAC, hundreds of sequential numbers repeatedly appear missing from the numeric sequence, indicating withheld documents.

**10. TRIMAC Withholding Documents Court Ordered Produced: Evidence Overwhelming**

In addition to **TRIMAC'S** Confined Space Entry Document<sup>36</sup> and **TRIMAC'S** Dow contract,<sup>37</sup> **PHILLIPS** also has sworn testimony of numerous current and former **TRIMAC** employees. The **TRIMAC** employees all testify that **TRIMAC** maintained all the Wash Rack Documents this Court ordered produced. Deponents and affiants alike confirm under oath that **TRIMAC'S** claims that the documents no longer exist are false, that **TRIMAC** responded falsely to document requests, and that **TRIMAC** willfully violated this Court's Order.

**First, Christopher French** testified under oath that his office at **TRIMAC** recorded files for all hazardous waste and wastewater until at least French's departure in June 2020.<sup>38</sup> **PHILLIPS** left in August 2019. Ergo these documents were still within **TRIMAC'S** possession, custody and control when **PHILLIPS** was diagnosed with lymphoma and left **TRIMAC**, filed the instant claim, and served document requests on **TRIMAC**.

**Second, Patricia Warner** testified under oath that **TRIMAC** kept Wash Rack documents dating as far back as 2012 and they too all remained intact until at least

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<sup>36</sup> TRIMAC Confined Space Entry SP-PRAC-P0001 as revised 02-15 -2020 p 14 of 32, 3.2.1 (e) Documentation

<sup>37</sup> Uniform Bulk Motor Contract P 10 of 19 14(a)

<sup>38</sup> Christopher French deposition p 137, 3-9

Warner's departure in May 2019.<sup>39</sup> Phillips left in August 2019. Ergo these documents were still within **TRIMAC'S** possession, custody and control less than 90 days before **PHILLIPS** was diagnosed with lymphoma and left **TRIMAC**. Patricia Warner's affidavit<sup>40</sup> confirms **TRIMAC** maintained the Court ordered documents,

**Third, Johnny Rogers**, the Branch Manager, testified under oath that **TRIMAC** maintains the Shipping Manifests or Bills of Lading, Invoices, and Safety Data Sheets. Further, Rogers testified that **TRIMAC** maintains documents in a computerized system,<sup>41</sup> contrary to Mr. Rosetti and Ken Cooper's "manual record-keeping" claims.<sup>42</sup> Ergo these documents were still within **TRIMAC'S** possession, custody and control when **PHILLIPS** was diagnosed with lymphoma left **TRIMAC**, filed this claim, and served document requests on **TRIMAC** and are still in **TRIMAC'S** possession, custody and control even today.

**Fourth, Loren Offield** testified under oath that **TRIMAC** kept Wash Rack documents dating back to at least 2004 and they all remained intact until at least Offield's departure in May 2012.<sup>43</sup>

**Fifth, LaMont Mitchell** swore in his affidavit that Wash Rack documents, including but not limited to Wash Tickets, Wash Requests, Tank Entry Forms and Wash

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<sup>39</sup> See Affidavit of Patricia Warner

<sup>40</sup> See Affidavit of Patricia Warner

<sup>41</sup> Johnny Rogers Deposition, p 61, 1-5

<sup>42</sup> See Employer and Insurer's Joint Response and Objection to Claimant's Motion for Contempt Sanctions

<sup>43</sup> See Affidavit of Lauren Offield

Rack Orders, dating back to at least 2012 were stored in the shop at BR-345 and remained there intact at least up until Mitchell's departure on or about May 2014.<sup>44</sup>

**Sixth**, Clarence Glen stated in his affidavit that, "Wash Rack documents dating back to at least 2004 were all stored upstairs and remained there intact at least up until my departure in May 2017."<sup>45</sup> Ergo these documents were still within **TRIMAC'S** possession, custody and control within 2½ years of **PHILLIPS** being diagnosed with lymphoma and leaving **TRIMAC**.

In short, **PHILLIPS** has, at great expense, proved that **TRIMAC** willfully withheld and continues to withhold over 208,000 Wash Rack Documents this Court ordered produced. **TRIMAC'S** conduct warrants significant sanctions, including attorney's fees.

**11. Cornered, TRIMAC Claims Without Evidence that "Rick Barker Removed" the Court Ordered Documents**<sup>46</sup>

After being confronted with overwhelming evidence that documents existed, cornered **TRIMAC** again claimed that these documents no longer exist, and that purported **TRIMAC** employee "Rick Barker removed" them in 2018.<sup>47</sup> Numerous current and former **TRIMAC** employees testify to the contrary. There is no affidavit from any "Rick Barker." Only Ken Cooper's affidavit makes this hearsay claim. If true, that too will warrant more extreme sanctions, including striking **TRIMAC'S** answer and defenses.

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<sup>44</sup> See Affidavit of LaMont Mitchell

<sup>45</sup> See affidavit of Clarence Glen

<sup>46</sup> See Employer and Insurer's Joint Response and Objections to Claimant's Motion for Contempt Sanctions

<sup>47</sup> *Id.*

In sum, 1) **TRIMAC** produced zero responsive documents until after this Court's first hearing; 2) **TRIMAC** still withheld over 208,000 documents falsely claiming the bulk of the requested documents did not exist; 3) **TRIMAC** produced less than 3.5% of the documents the Court ordered produced; 4) This Court orders **TRIMAC** to fully and completely respond; 5) **TRIMAC**, when ordered to produce documents, produced the same 7,219 documents produced prior to this Court's Order under different file names; 6) **TRIMAC** denied more documents exist; and 7) once proved **TRIMAC** was withholding documents, including Tank Entry Permits, produced another 5,000 documents (still withholding an estimated 60,000 Tank Entry Permits); 8) rather than produce the documents Court ordered produced, alleged an employee removed those documents around the time Philips left **TRIMAC**.

**TRIMAC'S** conduct here cannot be condoned by this Court.

On July 31, 2019, this Court wrote the following.

"Given the concerning nature of the statements made by Ms. Warner under oath, it is all the more imperative that the Employee be afforded full and complete responses to their discovery requests."<sup>71</sup>

Since July 31, 2019, **PHILLIPS** has uncovered more concerning behavior making this Court's September 11, 2020 Order even more important and time sensitive.

## **12. TRIMAC Intentionally Falsified Documents**

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<sup>71</sup> Court Order Phillips Order for Claim No 2019127648 September 11, 2020



**TRIMAC** falsifies documents to **PHILLIPS'** and other **TRIMAC** employees' detriment.

First, comparing the "Wash Requests" produced with the corresponding "Wash Rack Cleaning Work Orders" reveals that **TRIMAC** falsified the last contained chemicals. For example, PO# 97289 attached hereto, the "Wash Request" reads the last contained chemical is "**Formaldehyde**," a hazardous . . . [INSERT HERE HAZARD CASSIFICATION] (H<sub>2</sub>CO or CH<sub>2</sub>O) The "Wash Rack Cleaning Work Order" however reads, "**Glycol Ether**" [A NON-HAZARDOUS + CHEMICAL CLASSIFICATION?] (C<sub>8</sub>H<sub>18</sub>O<sub>3</sub> or (C<sub>2</sub>H<sub>5</sub>CH<sub>2</sub>CH<sub>2</sub>)<sub>2</sub>O). "Formaldehyde" (37%) – a KNOWN human carcinogen<sup>72</sup> – is nothing remotely akin to "Glycol Ether."<sup>73</sup>

Second, Patricia Warner, a Wash Rack administrator, testified, "**TRIMAC'S** management, including Ken Cooper, had [her] Google and substitute chemicals on the Wash Rack Tickets such that the Wash Rack Tickets did **not accurately reflect** what was last contained in the Truck Tank cleaned by **PHILLIPS**."<sup>74</sup>

Third, LaMont Mitchell testifies in his affidavit that, "**TRIMAC** falsified documents to conceal the chemicals last contained in the tank trucks. I remember that, among other things, "mineral oil" was written on **TRIMAC** cleaning documents, concealing the actual chemicals, including Benzene, that was last contained in the tank trucks that we (me, Demetrius **PHILLIPS** and others) cleaned."<sup>75</sup>

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<sup>72</sup> (Carcinogenic to Humans, *The Lancet Oncology*, Vol 5, Sept 2004, V. Coglian, et al)

<sup>73</sup> There are numerous examples of these changes.

<sup>74</sup> See Affidavit of Patricia Warner

<sup>75</sup> See Affidavit of LaMont Mitchell

Fourth, Clarence Glen states in his affidavit that, “**TRIMAC’S** management including Ken Cooper, James Petway and others had employees falsify documents and substitute chemicals on the documents such that the Wash Rack Documents did not accurately reflect what was contained in the Tank Trucks cleaned by me, Demetrius **PHILLIPS** and others.”<sup>76</sup>

Fifth, Loren Offield, states in his affidavit that, “**TRIMAC’S** management, including Rick Barker, and others had employees falsify documents and substitute chemicals such that the Wash Rack Documents did not accurately reflect what was contained in the tank Trucks by me [Offield], Demetrius **PHILLIPS** and others.”<sup>77</sup>

Numerous former **TRIMAC** employees have testified to **TRIMAC’S** practice of falsifying documents and **CHEMICALS**. As a result, it is imperative that **TRIMAC** to produce **ALL** Court ordered documents from which **PHILLIPS** can ascertain the truth and conduct proper discovery.

### **13. Documents Withheld Show Benzene<sup>78</sup> Exposure – contrary to TRIMAC’S Representations to PHILLIPS and this Court**

**TRIMAC** has suggested that no documents contain Benzene and now, on at least 2 occasions, denied transporting handling or cleaning any Benzene products.<sup>81 82</sup> **TRIMAC** Facility Manager, Ken Cooper, writes in an email, “[T]here were no benzene products cleaned or handled in the Fairburn cleaning rack by any employee, including

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<sup>76</sup> See Affidavit of Clarence Glen

<sup>77</sup> See Affidavit of Loren Offield

<sup>78</sup> Benzene is a known carcinogen.

<sup>81</sup> See Attached Ken Cooper Letter. 5/5/2020

<sup>82</sup> See Attached Joseph Carson Letter. 3/20/2020

Mr. Phillips.”<sup>83</sup> **TRIMAC** Facility Manager, Joseph Carson, also claims, “There was no loading or washing of any tanks that contained benzene to my knowledge.”<sup>84</sup>

**TRIMAC** Wash Rack Supervisor, Johnny Rogers, testified at page 47 lines 5-21 of his deposition as follows:

5 Q. Is it your testimony that to your knowledge  
6 no tank trucks since 2010 have been cleaned at the  
7 Fairburn Trimac that last contained Benzene?  
8 A. To my knowledge, that's correct.  
9 Q. The same for Trilene?  
10 A. True.  
11 Q. The same for --  
12 A. To my knowledge.  
13 Q. The same for Toluene?  
14 A. Yes, to my knowledge.  
15 Q. The same for Xylene?<sup>85</sup>  
17 Q. The same for in any ENEs?  
18 A. Correct.  
19 Q. That's because it's not safe for the  
20 technicians?  
21 A. Correct

**PHILLIPS'** fellow employees, including **Christopher French**,<sup>86</sup> **Clarence Glen**,<sup>87</sup> **Loren Offield**,<sup>88</sup> **LaMont Mitchell**<sup>89</sup> and others all testified under oath that **PHILLIPS** was cleaning Benzene and benzene products.

(1) **Loren Offield** testified under oath that, “While employed at **TRIMAC**, we cleaned tank trucks containing Benzene on a weekly basis.”<sup>92</sup>

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<sup>83</sup> See Attached Ken Cooper Letter. 5/5/2020

<sup>84</sup> See Attached Joseph Carson Letter. 03/21/2020

<sup>85</sup> Johnny Rogers Deposition p 47, 5-21

<sup>86</sup> See Deposition of Christopher French

<sup>87</sup> See Attached Affidavit of Clarence Glen

<sup>88</sup> See Attached Affidavit of

<sup>89</sup> See affidavit of LaMont Mitchell

<sup>92</sup> See affidavit of Loren Offield

(2) **LaMont Mitchell** testified under oath that, “While employed at **TRIMAC**, we cleaned tank trucks containing Benzene on a weekly basis.”<sup>93</sup>

(3) **Clarence Glen** testified under oath that, “While employed at **TRIMAC**, we cleaned tank trucks containing Benzene on a weekly basis.”<sup>94</sup>

(4) **Christopher French** admitted in his deposition that **TRIMAC** cleaned trucks which last contained products containing Benzene. Moreover, Christopher French admitted that he spoke over the phone with Phillip’s counsel Potts (“Potts”) on October 27, 2020. In this call, French admitted that **TRIMAC** cleaned tank trucks which last contained “Poison B” – referring to Benzene. French later claimed that when he said, “Poison B” he meant “Acrylate.” The first letter in Acrylate, is of course A, not B. So while Mr. French, admitted cleaning and calling Benzene “Poison B” for over the 30 years while employed at **TRIMAC** in his deposition, refers to “**A**”crylate as Poison “**B**.” Still, French testifies that **PHILLIPS** cleaned tank trucks which last contained chemicals containing Benzene.<sup>95</sup>

### 13.1. **EPA Also Reports Finding Benzene**

Also undermining **TRIMAC’S** false claims, the Environmental Protection Agency (“EPA”) – an impartial governmental agency – found and reported Benzene at **TRIMAC’S** Fairburn facility in 2016<sup>96</sup> and 2018<sup>97</sup>:

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<sup>93</sup> See affidavit of LaMont Mitchell

<sup>94</sup> See affidavit of Clarence Glen

<sup>95</sup> See Deposition of Christopher French, p 46, 1-5

<sup>96</sup> See Deposition of Christopher French, p 46, 1-5

<sup>97</sup> RCRA inspection Report, 2018, p 3 of 10, 10. Facility Description

The EPA RCRA Inspection Report for 2016 provided in pertinent part as follows, “The hazardous waste generated are [among others] benzene (D018).”<sup>98</sup>

Ken Cooper, who denied handling any Benzene products, participated in the inspection and is listed in the EPA’s 2016 RCRA Inspection Report.<sup>99</sup>

The EPA again found Benzene at **TRIMAC** in 2018.<sup>100</sup>

“The hazardous wastes generated are from the disposal of the retained samples and the cleaning of the truck tanker trailers: [among others] benzene (D018).”<sup>101</sup>

**TRIMAC** employee, Joseph Carson, who also denied handling Benzene products, participated in the EPA’s 2018 inspection and is listed in the EPA’s 2018 RCRA Inspection Report, not produced by **TRIMAC**.

**TRIMAC’S** EPA violation reports were also withheld by **TRIMAC** and instead produced at great expense to **PHILLIPS**, by the EPA. Given that **TRIMAC** is publicly traded and one of largest trucking companies in north America with revenues in 2019 exceeding \$400 Million their claim to antiquated “manual record-keeping” as a reason for not producing document in compliance with this Court’s Order is not only contrary to the sworn testimony in this case, it is hardly believable.

As importantly, **TRIMAC** misrepresented to this Court the identity of the **CHEMICALS** to **PHILLIPS’** detriment. **TRIMAC** should be sanctioned and ordered to

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<sup>98</sup> RCRA Inspection Report, 2016, p 2 of 5, 9. Findings

<sup>99</sup> RCRA Inspection Report, 2016, p 1 of 5, 4. Inspection Participants

<sup>100</sup> See Attached RCRA inspection Report, 2018, p 3 of 10, 10. Facility Description

<sup>101</sup> *Id.*

**produce instant** all **Wash Rack Documents** to which **PHILLIPS** is entitled, including the following.<sup>103</sup>

“Any and all, including any and all Shipping Manifests, Bills of Lading, Safety Data Sheets (“SDS”), Material Safety Data Sheets (“MSDS”), Wash Tickets, Wash Requests, Wash Rack Work Orders, Tank Entry Forms, Invoices and all other documents (“**Wash Rack Documents**”) regarding any and all tank truck cleaning, tank cleaning, railcar cleaning and tank trailers and trucks for all Georgia **TRIMAC** tank truck cleaning facilities including, Atlanta, Fulton County Georgia at 605 Selig Drive SW, Atlanta, Fulton County, Georgia 30336 (“**TRIMAC’S** Atlanta Facility”), or 6800 McLarin Road, Fairburn, Fulton County, Georgia (“**TRIMAC’S** Fairburn Facility”) or both,<sup>104</sup> <sup>105</sup> from January 1, 2000 to present.”

#### **14. TRIMAC Intentionally Mislabels Hazardous Materials**

Because **TRIMAC** routinely labels hazardous chemicals as non-hazardous<sup>106</sup> on, *inter alia*, their required Tank Entry Permits to induce **PHILLIPS** and other **TRIMAC** employees to enter tank trucks last containing hazardous **CHEMCIALS** without legally required PPE for cleaning and maintenance, it is imperative that all “**Wash Rack Documents**” be produced. See **TRIMAC’S** attached June 28, 2019, Tank Entry Permit.

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<sup>103</sup> *Supra*

<sup>104</sup> TRIMAC Pollutant Management Plan (PMP) p 5 of 16, 2.1 Facility Location [Exhibit 1]

<sup>105</sup> TRIMAC Pollutant Management Plan (PMP) p 5 of 16, 2.2 Facility Operation

<sup>106</sup> See attached Tank Entry Permit

**PHILLIPS** routinely climbed into truck tanks which contained hazardous **CHEMICALS** labeled by **TRIMAC** as “non-hazardous.” As indicated by **TRIMAC’S** Tank Entry Permits, **TRIMAC** provided **PHILLIPS** no PPE to safely clean the confined spaces. Perhaps even more disconcerting is that **TRIMAC’S** supervisor signed off on the Permits which show **PHILLIPS** was routinely entering hazardous tank trucks without PPE. Because there are numerous misrepresentations, the balance of documents is not only reasonably required to lead to discovery admissible evidence, but also required here to prove the veracity of the documents.

**15. Contrary to TRIMAC’S Misrepresentations, TRIMAC Doesn’t Get Legally Required Respirators until October 2020, over a year after PHILLIPS last worked at TRIMAC**

**TRIMAC** is legally required by numerous governmental agencies including, among others, OSHA<sup>113</sup> to provide respirators to workers entering confined spaces that last contained these **CHEMICALS**. However, **PHILLIPS**, among other employees, was not provided legally required respirators nor adequate ventilation that would protect **PHILLIPS** from the hazardous chemicals he was handling and cleaning. Former **TRIMAC** employee Carter Grady (“Grady”) testified on November 6, 2020 that **TRIMAC** did not provide respirators until “maybe a week or two ago,”<sup>114</sup> i.e., on or about October 2020. That’s over a year after **PHILLIPS** left **TRIMAC’S** employment.

Grady also testified that **PHILLIPS** routinely went into tank trucks to clean TDI (Toluene Dyscyanate), a toxic, hazardous chemical, **without** a respirator. **TRIMAC’S**

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<sup>113</sup> OSHA Regulations, 1910.134(a)(2): “A respirator shall be provided to each employee when such equipment is necessary to protect the health of such employee.”

<sup>114</sup> Carter Grady Deposition p 23, 24-25; p 24, 1-10

very own “Isocyanate Full Clean, Top Load Preparation and Hose Cleaning Processes and Best Practices”<sup>115</sup> requires,

“Because of the hazards associated with Toluene Diisocyanate (TDI) a **full faced positive pressure respirator must be worn** when working in close proximity. This is not only NTS and **TRIMAC** policy but an **OSHA Regulation requirement** as well. There is Zero Tolerance for lapses.”<sup>116</sup>

**TRIMAC’S** policies are oft times kept from employees, further undermining the health, safety and well-being of their workers like Demetrius **PHILLIPS**, who now suffers from Blastoid cell Lymphoma. As a result, it is imperative **TRIMAC** ordered to produce documents to separate truth from falsehood.

#### **16. Disposing of Remaining Chemicals (“Excess Heel”) In Garbage Bins Contrary to TRIMAC’S Claims of Legal Compliance**

**TRIMAC** also unlawfully exposed **PHILLIPS** to hazardous chemicals by unlawfully and improperly requiring him to mix by hand hazardous chemicals with other chemicals and illegally disposing of hazardous and toxic chemical heel (waste) in a garbage dumpster while circumventing compliance with the EPA, OSHA, Georgia Department of Natural Resources, Fulton County and other agencies.

First, Clarence Glen stated in his deposition that **TRIMAC** disposed of heel illegally on a daily basis by first diluting chemicals with hot water and then sending it to

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<sup>115</sup> See Attached Isocyanate Full Clean, Top Load Preparation and Hose Cleaning Processes and Best Practices

<sup>116</sup> Trimac’s Isocyanate Full Clean, Top Load Preparation and Hose Cleaning Processes and Best Practices



the water treatment facility. This way **TRIMAC** could avoid various government agencies finding out the amount of **CHEMICALS TRIMAC** was putting into the wastewater. He stated, “It was coming out the of wash rack money for us to dispose of those chemicals, that we [weren’t] supposed to dump heel. Flush it, flush it, flush it, flush it over to the water treatment.”<sup>117</sup>

Second, LaMont Mitchell testified, “At **TRIMAC**, BR-345 we also mixed excess heel of MDI and TDI with polyol to produce a foam so as to dispose of it in the garbage bins and not charge the company for disposal of the heel or waste.”<sup>118</sup>

Third, Loren Offield states in his affidavit, “At **TRIMAC**, BR-345 we also mixed excess heel of MDI and TDI with a foam so as to dispose of it in garbage bins and not charge the company for heel or waste.”<sup>119</sup>

Fourth, Patricia Warner states in her affidavit, “At **TRIMAC**, BR-345 we also mixed excess heel of MDI and TDI with a foam so as to dispose of it in garbage bins and not charge the company for heel or waste.”<sup>120</sup>

This is further evidence of (1) **TRIMAC’S** unlawful and surreptitious practice that (2) enable **TRIMAC** to cut costs and boost revenue (which already exceeds 400 million), (3) while placing **TRIMAC** workers at risk from repeated exposure to hazardous chemicals.

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<sup>117</sup> Clarence Glen Deposition, p 70, 10-13

<sup>118</sup> See Affidavit of LaMont Mitchel

<sup>119</sup> See Affidavit of Loren Offield

<sup>120</sup> See Affidavit of Patricia Warner

## Argument and Citation of Authority

On July 31, 2019, the Court wrote:

“Given the concerning nature of the statements made by Ms. Warner under oath, it is all the more imperative that the Employee be afforded full and complete responses to their discovery requests.”<sup>122</sup>

### Sanctions for TRIMAC’S Violations of Georgia Civil Practice Act and This Court’s Order

Under Georgia law the severe sanction of striking Defendant/Employer’s Answer and Defenses is generally reserved for cases where evidence is destroyed. *Orkin Exterminating Co. v. McIntosh*, 215 Ga. App. 587, at 589 (1994) (in O.C.G.A 9-11-37(d) held, “[t]he imposition of penalties ... is limited to an absolute failure to respond); *Wellstar Health Systems, Inc. v. Kemp*, 324 Ga. App. 629 (2013) (reversing the order striking Wellstar’s answer because key evidence has not been destroyed, dismissal of a case is not warranted); *Wills v. McAuley*, 166 Ga. App. 4, at 5 (1983) (since there was not a total failure to respond to discovery, the movant was required to file a motion to compel even when seeking relief from false answers); See, also *Wayne M. Purdom*, *Georgia Civil Discovery With Forms*, § 16:13 pp. 512-513 (2015-2016 Ed.).

Until it is proved that the documents **PHILLIPS** requires no longer exist, only attorney’s fees and sanctions pursuant to this Motion are required. If the documents have been destroyed, however, this Court will likely have to consider much harsher sanctions.

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<sup>122</sup> Court Order Phillips Order for Claim No 2019127648 September 11, 2020

Since Ms. Warner's affidavit, **PHILLIPS** has accumulated considerably more evidence confirming Warner's statements and, in spite of **TRIMAC'S** discovery tactics, unearthing still more of **TRIMAC'S** behavior – withholding documents, falsely denying documents exist, falsifying documents. **TRIMAC** has shown a strong preference for profit over their workers' health. **TRIMAC** must be required to produce the balance of documents requested and ordered produced by this court *instanter*, and for such other and further relief as this Court deems proper.

WHEREFORE, **TRIMAC** should be sanctioned and ordered to pay costs and attorney's fees and ordered to *produce instanter* all Wash Rack Documents as described *supra* and to which **PHILLIPS** is entitled, as follows.

1. Any and all **Wash Rack Documents**, including any and all Shipping Manifests, Bills of Lading, Safety Data Sheets ("SDS"), Material Safety Data Sheets ("MSDS"), Wash Tickets, Wash Requests, Wash Rack Work Orders, Tank Entry Permits, Invoices and all other documents ("**Wash Rack Documents**") regarding any and all tank truck cleaning, tank cleaning, railcar cleaning and tank trailers and trucks for all Georgia **TRIMAC** tank truck cleaning facilities including, Atlanta, Fulton County Georgia at 605 Selig Drive SW, Atlanta, Fulton County, Georgia 30336 ("**TRIMAC'S** Atlanta Facility"), or 6800 McLarin Road, Fairburn, Fulton County, Georgia ("**TRIMAC'S** Fairburn Facility") or both,<sup>123 124</sup> from January 1, 2000 to present.
2. For such other and further relief as this Court deems proper.

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<sup>123</sup> TRIMAC Pollutant Management Plan (PMP) p 5 of 16, 2.1 Facility Location [Exhibit 1]

<sup>124</sup> TRIMAC Pollutant Management Plan (PMP) p 5 of 16, 2.2 Facility Operation

This 5<sup>th</sup> day of January 2021.

/s/James Hugh Potts II  
**James Hugh Potts II**  
Georgia Bar No. 585677  
Trial Lawyer for Plaintiffs  
james@jhprii.com

**JHPRII, LLC**  
**1348 Ponce De Leon Avenue**  
**Atlanta, GA 30306**  
**404.812.0000**  
www.jhprii.com

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a copy of **PLAINTIFFS' SUPPLEMENT TO MOTION FOR CONTEMPT SANCTIONS FOR FAILURE TO COMPLY WITH THIS COURT'S ORDER** upon all parties to this matter via email and Georgia State Board of Worker's Compensation which will send electronic notification to all counsel of record.

This 5<sup>th</sup> day of December 2021.

**/s/Elizabeth Crocker**

Elizabeth Crocker  
Legal Assistant  
elizabeth@jhprii.com

**JHPRII, LLC**  
**1348 Ponce De Leon Avenue**  
**Atlanta, GA 30306**  
**Telephone 404.812.0000**  
**www.jhprii.com**

## EXHIBIT 1



# HAZARD EVALUATION REPORT AND HOT WORK PERMIT

(To be completed prior to all tank entries)

389951

It is potentially harmful to human health to enter a hazardous confined space, or to be exposed to dangerous substances. The company policy prohibits any employee from entering tanks or handling dangerous substances without the written consent of the company.

Date: 6/28/19 Unit #: 470712 Time: 11:09 AM Branch: 267

Product Hauled Last: MDI Duration of Permit: 2hr

CHARACTERISTICS OF PRODUCT HAULED LAST: (Refer to Material Safety Data Sheet)

<input type="checkbox"/> Toxic	<input type="checkbox"/> Explosive	<input type="checkbox"/> Flammable
<input type="checkbox"/> Oxygen Deficient	<input checked="" type="checkbox"/> Other (specify) <u>MDI</u>	

REASON FOR ENTERING TANK ☒ Cleaning ☐ Repairing ☐ Hot Work ☐ Other: (explain)

## PRE-ENTRY PROCEDURES (To be completed by qualified person entering tank.)

- Remove all caps and plugs, open manifolds, valves and domes and disconnect, or blank off, all supply lines
- Determine cleaning or purging activities performed since the trailer was used last.  
☐ Steamed ☐ Purged ☒ Flushed ☐ Detrex ☐ Other
- Test each trailer compartment, discharge valves, loading lines, all voided sections and record last results as follows: (Each test must be repeated at intervals not to exceed two hours.)  
☒ Tester has verified the meter is calibrated and is properly functioning per manufacturer's recommendations.

	Tester Pre-Test	First Test	Second Test	Third Test	Fourth Test	Allowable Limits
OXYGEN	<u>20.9</u>	<u>20.9</u>				19.5% - 23%
EXPLOSIVE	<u>0</u>	<u>0</u>				0%
TOXIC	<u>0</u>	<u>0</u>				As Per Data Sheet
TIME OF TEST	<u>11:14</u>	<u>11:38</u>				

TIME OF ENTRY \_\_\_\_\_ ANTICIPATED TIME OF EXIT \_\_\_\_\_

## 4. Signature of person conducting tests above:

[Signature]

[Signature]

[Signature]

[Signature]

- If the above tests indicate acceptable levels for human survival, test ventilation equipment and position equipment in confined space to be entered.
- If the above tests indicate non-complying limits, entry to the tank is not permitted under any condition.
- Visually inspect all safety and rescue equipment to ensure it is operating.
- Individuals entering any tank must wear the rescue harness, life line and other personal protective equipment, and carry with them an explosion proof light. The attendant / observer must have an air horn.  
Additional items required for welding:  
☐ Ventilation Equipment  
☐ Hearing Protection  
☐ Water/Fire Extinguisher  
☐ Gloves  
☐ Welding Helmet  
☐ Leather Work Boots  
☐ Other (list) \_\_\_\_\_  
Additional items required for cleaning:  
☐ Gloves  
☐ Coveralls  
☐ Rubber Boots  
☐ Other (list) \_\_\_\_\_
- The life line to the harness must be anchored outside the tank.
- Do not remain in a confined space for periods exceeding two hours.
- Review emergency and rescue procedures outlined on the reverse side of this form with the individual who is to act as the observer.
- Enter the tank only after the observer is in place, required tests are completed, the appropriate safety equipment is in place and the authorized company approval is obtained.
- The Observer must remain in verbal and/or visual contact throughout the duration of occupancy in the tank.
- Record any problems that occur during the course of the tank entry on the reverse of this form.
- If any problems are noted, a copy of this report must go to the Health and Safety Committee. Depending upon the severity of the problem, a fact-finding may be required.

I have read and understand the foregoing procedures and requirements.

Signatures: [Signature]

[Signature]

Authorized Company Approval

Reviewed by the Supervisor: \_\_\_\_\_ Date: \_\_\_\_\_

## EXHIBIT 2



# Required PPE and Tools

Hard Hats and Safety Glasses are required to enter any of the washrack bays. However, some jobs such as cleaning hoses and using a Grinder require additional Personal Protective Equipment. Both TDI and MDI are Hazardous Materials which add additional hazards. You are responsible for your safety while performing job related tasks as well as proper use and care of all PPE.

Below is a list of required PPE and Tools needed to properly prepare an MDI or TDI Top Load trailer.

- ① Hard Hat with faceshield



- ⑦ Safety Glasses



- ⑫ WypAll Rags



- ② Safety Goggles



- ⑧ Rubber Safety Boots



- ⑬ Half-face Respirator with Organic Vapor/Acid Gas Cartridge



- ③ Chemical Resistant PVC Gloves



- ⑨ Intrinsically Safe LED Flashlight



- ④ 10" Tongue and Groove plier



- ⑩ 10" Flat Head Screwdriver



- ⑤ 8" High-Leverage diagonal cutting pliers (Kleins)



- ⑪ Full Body Harness



- ⑥ Brass Spark-less Hammer



## TDI Only

Full Face Positive Pressure Respirator



*\*Because of the hazards associated with Toluene Diisocyanate (TDI) a full faced positive pressure respirator must be worn when working in close proximity. This is not only NTS and Trimac policy but OSHA Regulations as well. There is **Zero Tolerance** for lapses.*

## EXHIBIT 3



# GEORGIA

DEPARTMENT OF NATURAL RESOURCES

## ENVIRONMENTAL PROTECTION DIVISION

**Richard E. Dunn, Director**

**Land Protection Branch**  
2 Martin Luther King, Jr. Drive  
Suite 1054, East Tower  
Atlanta, Georgia 30334  
404-656-7802

### RCRA INSPECTION REPORT

August 7, 2018

**FILE COPY**

**1. Facility Information**

Trimac Transportation  
6800 McLarin Road  
Fairburn, Georgia 30213  
Fulton County

EPA ID Number: GAD064489180  
Latitude: 33.544312°  
Longitude: -84.610972°  
File Locator Number: 261-0467

**2. Responsible Official**

Karlan Kim Barthlow, Environmental and Property Manager  
770-964-4848 ext. 212

**3. Inspector and Author of Report**

John Williams, Environmental Compliance Specialist  
Hazardous Waste Management Program  
404-657-8840

**4. Inspection Participants**

John Williams, Environmental Compliance Specialist, GA EPD  
David Champagne, Region 4 EPA  
Karlan Kim Barthlow, Trimac  
Stephanie Rock-Rogers, Trimac  
Joseph Carson, Branch Manager Transloading Services, Trimac  
Shermaine Thrash, Operations Manager Transloading Services, Trimac  
Ricky Barker, Maintenance Shop Supervisor, National Tank Services, Trimac  
Christopher French, Environmental Technician, National Tank Services, Trimac

**5. Date and Time of Inspection**

July 31, 2018 at 9:00 AM

**6. Applicable Statute and Regulations**

The Georgia Hazardous Waste Management Act, as amended, O.C.G.A. 12-8-60, et seq. as amended (Act), Chapter 391-3-11 of the Georgia Rules for Hazardous Waste Management (Rules), and those portions of 40 CFR Parts 260-270, 273, and 279 that are adopted into the Rules by reference.

**7. Purpose of Inspection**

The purpose of this inspection was to conduct an unannounced Compliance Evaluation Inspection to determine the compliance status of Trimac Transportation with the applicable requirements of the Act and Rules. This inspections was jointly conducted with a representative of US Environmental Protection Agency (EPA) Region 4

**8. Pre-Inspection History**

Last inspection date: 02/08/2016

Violations identified in last inspection:

- Georgia Rules Section 391-3-11-.08(3) – maintain weekly inspections for three years;
- 262.34(a)(2) – no accumulation start date on ten 55-gallon drums;
- 262.34(a)(4) – no aisle space for ten 55-gallon drums in central accumulation area;
- 262.34(c)(1)(ii) – satellite drum in retain shipping container not labeled “Hazardous Waste”;
- 265.52(d) – no home addresses for Emergency Coordinator on Emergency Action Plan; and
- 265.53(b) – Emergency Plan not submitted to local authorities.

Return to compliance date, if applicable: 05/12/2016

Notification date (8700-12): 06/29/2018

Notification status: Large Quantity Generator

Hazardous Sites Inventory: Not applicable

Other permits: EPD Air Permit 5169-121-0524-B-01-0 expires 10/20/2021;

EPD Industrial Storm water General Permit GAR050000; and

Fulton County Industrial Wastewater Pre-treatment Permit C-4213/4231-101 expires 05/31/2019.

NAICS code: 42469 – Other chemical and allied products merchant wholesalers

**9. Arrival at Facility**

Upon arrival at the facility, David Champagne, EPA, and I met with Stephanie Rock-Rogers, Property and Environmental Coordinator, introduced ourselves, gave her our business cards, and explained the purpose of the visit. She contacted Joseph Carson and Chris French to meet with us. When they arrived, an opening conference was held. We then proceeded to conduct the inspection.

10. **Facility Description**

Trimac Transportation is a bulk transporter of liquid products by railroad tank car and truck trailers. The facility operates 7 AM-4 PM Monday through Friday with 50 employees. Five buildings on the property have a total of 15,068 sq. ft. The facility was built in 1975 by DSI Transportation. The 28.18 acre property is owned by Trimac Transportation, 15333 JFK Blvd. Suite 800, Houston, TX. Their railroad track siding will hold 110 railroad tanker cars. The facility operates a truck wash for their tanker trailers and a truck maintenance shop. An onsite Q/C laboratory technician collects samples of each railroad tank car shipment before off-loading it into tanker trucks or one of 38 aboveground storage tanks. The retained laboratory samples are disposed of as a hazardous waste after three to nine months.

**Process and Hazardous Waste Generation**

The product in the railroad tank cars and aboveground storage tanks is owned by the manufacturers (Attachment #1). The hazardous wastes generated are from the disposal of the retained samples and the cleaning of the truck tanker trailers: flammable liquid and solids (D001); corrosive (D002); chromium (D007); mercury (D009); silver (D011); benzene (D018); spent solvent (F003); and unused xylene (U239).

11. **Findings**

**Satellite Accumulation Areas (SAA)**

**Metal Shipping Container**

The metal shipping container is located on the Northside of the old office building, where retained samples are stored. At the time of the inspection, the following containers were observed in the unlabeled SAA's in this area:

SAA #1 - One 55-gallon drum of corrosive liquid UN1805 was closed, labeled "Hazardous Waste", had a corrosive diamond label, and contained 45 gallons.

SAA #2 - One 35-gallon PVC drum of corrosive liquid UN1805 was labeled "Hazardous Waste", had a corrosive diamond label, contained 10 gallons, but was not closed (**Violation #1**).

SAA #3 - One 55-gallon metal drum of flammable liquid was labeled "Hazardous Waste", had a flammable diamond label, and contained 35 gallons. The drum had a metal screen over the opening to facilitate draining sample retains into the drum, but the drum was not closed (**Violation #1**). It appeared that during pouring some retains had spilled on the floor of the shipping container and had not been cleaned up (**Violation #2**).

SAA #4 - One 35-gallon PVC drum of potassium hydroxide, a corrosive liquid, was closed, labeled "Hazardous Waste", had a corrosive diamond label, and contained one gallon.

SAA #5 - One 35-gallon PVC drum of tetraethylenepentamine (TEPA), a corrosive liquid, was closed, labeled "Hazardous Waste", had a corrosive diamond label, and contained one-half gallon.

#### Three-Bay Tanker Trailer Wash Building

The Tanker Trailer Wash Building is located on the north side of the maintenance shop on the southeast side of the property. At the time of the inspection, the following containers were observed in the designated and labeled with signs SAA's:

SAA #1 - One 55-gallon metal drum of corrosive liquid was closed, labeled "Hazardous Waste", and contained 40 gallons, but did not have a corrosive diamond label (**Violation #3**).

SAA #2 - One 55-gallon metal drum was labeled "Non-hazardous."

SAA #3 - One 55-gallon metal drum of flammable liquid was labeled "Hazardous Waste", not closed (**Violation #1**), did not have a flammable diamond label (**Violation #3**), and contained 40 gallons.

SAA #4 - One 55-gallon metal drum of liquid amines was not closed (**Violation #1**), but was labeled "Hazardous Waste", had a corrosive diamond label, and contained 50 gallons. However, the corrosive liquid is incompatible with a metal drum (**Violation #4**). When adding the waste in the 55-gallon drum, the waste had been spilled on the outside of the container and ran onto the concrete bay floor (**Violation #2**).

#### **90 Day Central Accumulation Area (CAA)**

The CAA is located on the east side of the Three-bay Tanker Trailer Wash Building. At the time of the inspection the following containers were observed in the CAA:

One full 55-gallon metal drum of flammable liquid was closed, labeled "Hazardous Waste", had a flammable diamond label, and was dated 07/02/18.

One full 55-gallon PVC drum of corrosive liquid (UN2735) was closed, labeled "Hazardous Waste", but did not have a corrosive diamond label (**Violation #16**), and was dated 07/02/18.

One 250-gallon tote was closed and contained 125 gallons. The contents of the tote were unknown (**Violation #12**).

### **Closure of flammable liquids aboveground 1,000-gallon storage tank T-3**

The tank T-3 was located on the south side of the Three-Bay Tanker Trailer Wash Building.

The inspection team reviewed two waste profiles for the waste stored in tank T-3 dated March 14, 2018 and March 17, 2018. Chemical compositions for the profile dated March 14, 2018 consisted of 50-70% Methyl Ethyl Ketone (MEK), 0-5% benzene, and with a flashpoint of less-than 100°F. Trimac had determined that the applicable waste codes are D001, D007, D026, D035 and D037. Chemical compositions for the profile dated March 17, 2018 consisted of 1-10% MEK, 0-1% cresols, trace amounts of pentachlorophenol, and with a flash point of less-than 100°F. Trimac had determined that the applicable EPA waste codes are D001, D007, D026, D035, and D037.

The tank was emptied on 04/23/18 and was in the process of being closed out. At the time of the inspection, the manway cover on the tank was loose with one bolt holding the manway. The tank had not been cleaned and was not labeled "Hazardous Waste" (**Violation #14**).

Additionally, one 55-gallon metal drum of flammable liquid was closed, labeled "Hazardous Waste", had a flammable liquid diamond label, contained 35 gallons, was dated 06/07/18, and was sitting in six inches of rain water inside the secondary tank containment.

No daily inspections of the tank ancillary equipment were available at the time of the inspection (**Violation #5**).

No monitoring records of the tank valves for leaks (Part 265 Subpart BB) were available at the time of the inspection (**Violation #6**).

No tank T-3 records (Part 265 Subpart CC) were available at the time of the inspection (**Violation #7**).

### **Records Reviewed**

Uniform Hazardous Waste Manifests were reviewed for the years 2016, 2017, and 2018. Land Disposal Restrictions, Bills of Lading, and Waste Profiles were also reviewed and appeared to be in good order.

**Contingency Plan** – The Emergency Action Plan was updated on January 2016. Letters to the local authorities were mailed on 04/28/16. Mr. Mike Edenfield was listed as the Alternate Response Coordinator. However, Mr. Edenfield is no longer employed at the facility (**Violation #8**).

**Weekly Inspection** – A review of the 2018 weekly inspections (Attachment #2) reveals that weekly inspections of the tank wash Central Accumulation Area were not inspected each week (**Violation #9**).

**Manifests** – Only three manifest were available for view in the 2018 manifest file: 02/23/18; 04/23/18; and 07/25/18 (**Violation #10**).

**Training** – Chris French, Environmental Technician, completed annual training on 08/30/17.

Bryan Bowen, Tank Wash, completed annual training on 02/01/18.

Mike Cheek, Maintenance, completed annual training on 04/12/18 (Attachment #3).

Miles Baecher, Loader, completed annual training on 05/20/18 (Attachment #4).

Ricky Barker, Maintenance Shop Supervisor, completed hazardous materials training on 03/19/2018 (Attachment #5).

No training records were available for these employees who manage hazardous waste and sign the manifest: Patrick Horn; Chance Deany; Brad Pierce; Jason Hortly; Ken Cooper; Antjuan Moore; and Travis Short (**Violation #11**).

#### **Additional Observations**

A review of the 2018 Biennial Hazardous Report revealed that the facility is a Large Quantity Generator of hazardous waste. The facility has emergency equipment throughout the facility.

**Waste water treatment plant** – The batch waste water treatment plant, which treats the Three-bay Tanker Truck wash water and rainwater from the secondary containments, has two aboveground 500-gallon equalization tanks for acids and bases. The acid and base wastewater is neutralized and flocculated with iron hydroxide. The treated water is discharged into a 3,000 gallon epoxy lined underground storage tank (UST) beneath the plant before being discharged into the Fulton County sanitary sewer under Permit #C-4213/4231-101, which expires May 31, 2019. The non-hazardous iron hydroxide sludge builds up in the bottom of the UST and has to be cleaned out periodically.

**Aerosol cans** – The truck shop uses aerosol brake cleaner. At the time of the inspection, one aerosol brake cleaner can was observed in the trash container. No hazardous waste determination had been made on the aerosol brake cleaner can in the trash container and was disposed without using a hazardous waste manifest (**Violation #12**) and



**(Violation #13).** The attached degreaser and brake cleaner Safety Data Sheet reveals that the product is a characteristic hazardous waste for ignitability of 7.4° F (Attachment #6).

**Dark stain on gravel and soil** – At the time of the inspection a dark stain on gravel and soil was observed between a metal shipping container, the concrete secondary containment north wall for the waste water treatment plant, and was West of the used oil storage tank. Clean-up the used oil stained gravel, soil, and dispose of properly **(Violation #15).**

**Parts washer** – A 35-gallon Safety-Kleen parts washer in the truck shop contained premium solvent with a flashpoint greater than 142°F.

**Shop rags** – The rags in the truck shop flammable container, to be laundered by Cintas, was not labeled and the rags in the shop locker room were scattered on the floor **(Violation #12);**

**Used Oil** – Used oil and used oil filters are generated in the truck shop and are collected by Safety-Kleen, TXD981052061, Irving, TX. The used oil is stored in a 1,500-gallon aboveground storage tank located on the west side of the truck shop. The used oil filters are stored in a covered metal bin outside the NW corner of the truck shop.

#### **Universal Wastes**

1. B & K Electric has a contract to remove and recycle the fluorescent lamps from the buildings and HID bulbs from the street lamps.
2. Lead acid battery cores in the truck shop are collected by MHC Kenworth. A “used battery” sign was on the wall above the accumulation area.
3. MHC Kenworth collects the spent battery cores.

#### **Non-Hazardous Waste Streams**

1. Republic Waste collects their regular office trash.
2. Cardinal Waste Services collects the truck shop’s scrap metal and the empty 55-gallon drums
3. Hill Tire collects the scrap tires.
4. Peach State Freightliner collects the spent brake pads.

#### **Areas of Concern**

1. The central accumulation area needs an engineered method to prevent the accumulation of rain water in the secondary containment area.

2. The rain water in the secondary containment of tank T-3 had not been pumped out to the waste water treatment plant and a 55-gallon drum of flammable liquid removed from tank T-3 was sitting in the water.

## 12. Conclusion

The findings of the inspection were presented at the end of the inspection to Mr. Barthlow, Mr. Carson, Mr. Barker, Mr. Thrash, and Mr. French. The facility is a Large Quantity Generator of hazardous waste. A copy of the RCRA Inspection Report will be mailed to the facility. EPA will be handling enforcement of the following violations of Georgia's Rules for Hazardous Waste Management observed during the inspection:

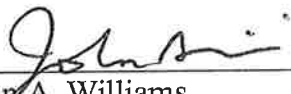
Rule 391-3-11-.08 "Standards Applicable to Generators of Hazardous Waste", which incorporates 40 CFR 262:

1. 40 CFR 262.15(a)(4) "Satellite accumulation area regulations for small and large quantity generators" – for failure to close the satellite containers during accumulation, except when adding, removing, or consolidating waste;
2. 40 CFR 262.251 "Maintenance and operation of facility" – for failure to operate the facility to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of hazardous waste constituents to air, soil, or surface water which could threaten human health or the environment;
3. 40 CFR 262.15(a)(5)(ii) "Satellite accumulation area regulations for small and large quantity generators" – for failure to indicate the hazards of the contents of the container in the satellite accumulation areas, #1 and #3 in the Tanker Trailer Wash Building;
4. 40 CFR 262.17(a)(1)(iii) "Conditions for exemption for a large quantity generator that accumulates hazardous waste in containers" – for failure to use a container that is made of or lined with a material that will not react with, and is otherwise compatible with, the hazardous waste to be stored, so that the ability of the container to contain the waste is not impaired in SAA #4 in the Tanker Trailer Wash Building;
5. 40 CFR 262.17(a)(2) "Conditions for exemption for a large quantity generator that accumulates hazardous waste in tanks", which incorporates 265.195(e) – for failure to conduct daily inspections of tank ancillary equipment that is not provided with secondary containment;


6. 40 CFR 262.17(a)(2) "Conditions for exemption for a large quantity generator that accumulates hazardous waste", which incorporates 265.1064 Recordkeeping Requirements – for failure to keep a record of monitoring the equipment on Tank T-3 for RCRA Subpart BB Organic Air Emission Standards for Equipment Leaks;
7. 40 CFR 262.17(a)(2) "Conditions for exemption for a large quantity generator that accumulates hazardous waste" – for failure to monitor Tank T-3 for RCRA Subpart CC Organic Air Emission Standards for tanks, including, but not limited to the tank requirements in 265.1085 and the recordkeeping requirements in 265.1090;
8. 40 CFR 262.261(d) "Content of contingency plan" – for failure to update the alternate emergency coordinator's name and phone number;
9. 40 CFR 262.17(a)(1)(v) "Conditions for exemption for a large quantity generator that accumulates hazardous waste" – for failure to inspect the Central Accumulation Area at least weekly;
10. 40 CFR 262.40(a) "Recordkeeping" – for failure to keep a copy of each manifest signed in accordance with 262.23(a) for three years or until the facility receives a signed copy from the designated facility which received the waste;
11. 40 CFR 262.17(a)(7)(i)(A) "Conditions for exemption for a large quantity generator that accumulates hazardous waste" – for failure of facility personnel to successfully complete a program of classroom instruction, online training, or on-the-job training that teaches them to perform their duties in a way that ensures compliance with this part;
12. 40 CFR Section 262.11 "Hazardous Waste Determination" – for failure to make a hazardous waste determination on the rags in the maintenance shop locker room; the 250-gallon tote's contents in the Central Accumulation Area, and the aerosol can of 6536 Degreaser and Brake Parts Cleaner III observed in the maintenance shop trash can;
13. 40 CFR Section 262.20(a)(1) "Manifest Requirements Applicable to Small and Large Quantity Generators" – for failure of the generator who transports or offers for transport the brake cleaner can in the trash container, a hazardous waste, for offsite treatment, storage, or disposal, to prepare a manifest on EPA Form 8700-22 according to the instructions;

14. 40 CFR Section 262.17(a)(5)(ii)(A) "Conditions for exemption for a large quantity generator that accumulates hazardous waste" – for failure to label Tank T-3 with the words "Hazardous Waste";
15. 40 CFR 279.22(d) "Used Oil Storage Response to Releases" – for failure to clean up and manage properly the released used oil on the gravel and ground behind the shipping container; and
16. 40 CFR Section 262.17(a)(5)(B) "Conditions for exemption for a large quantity generator that accumulates hazardous waste" – for failure to indicate the hazards of the contents of the 55-gallon PVC drum of corrosive liquid (UN2735) in the CAA.

13. **Signed**

  
\_\_\_\_\_  
John A. Williams  
Environmental Compliance Specialist

09/25/18  
\_\_\_\_\_  
Date

  
\_\_\_\_\_  
Nichole Rodgers  
Unit Coordinator  
Generator Compliance Unit

9/27/18  
\_\_\_\_\_  
Date

Attachments (6): 1) Transloading Customers List; 2) 2018 Weekly Inspections; 3) Mike Cheek's Training; 4) Miles Baecher's Training; 5) Ricky Barker's Training; 6) Safety Data Sheet 6535 Degreaser and Brake Parts Cleaner III